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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,353	06/30/2003	Kiyoshi Miyazaki	50630/DBP/A400	8167

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EXAMINER

KRAWCZEWICZ MYERS, LOUANNE C

ART UNIT

PAPER NUMBER

1661

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/611,353	MIYAZAKI, KIYOSHICB	
	Examiner	Art Unit	
	Louanne C Krawczewicz Myers	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/~~are~~ pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/~~are~~ rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

LK Myers

DETAILED ACTION

Status of Application

Applicant's amendment and drawings filed October 4, 2004 have been received and are acknowledged. The information requested in the previous Office Action dated June 3, 2004 has fulfilled the previous requests for information, however, additional information and correction to the specification is required. An Office Action follows.

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) and under 35 U.S.C. 112 first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

- A. Page 14, lines 12 and 13, Applicant states in the specification "*Senecio* genus and from parent varieties" which appears unclear and grammatically incorrect. Applicant should delete the recitation "genus" and insert instead in its place -- varieties-- and delete "parent" and insert in its place --the parental--.

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- B. Page 14, lines 15 and 16, "high type" appears to be unclear and grammatically incorrect. Correction to the specification and/or clarification is necessary.
- C. Page 15, lines 9 and 12, "genus" should be deleted since the recitation without this term would be more than adequate. Applicant is requested to check the entire specification for other instances of this similar situation and correct the specification accordingly.
- D. Page 16, line 29, "Inflorescence" is misspelled. Applicant states "Single flowered". It appears instead that --Single inflorescence-- would be more botanically accurate terminology to use in this instance. Correction to the specification and/or clarification is necessary.
- E. Page 16, line 34, Applicant sets forth the diameter of inflorescence and it is unclear if this measurement is for a single inflorescence. Applicant should set forth in the specification a diameter for a single inflorescence.
- F. Page 16, line 35, Applicant sets forth a size for a "disc floret". It is unclear if this measurement is the disc length or diameter or what measurement is being described. Correction to the specification and/or clarification is necessary.

- G. Page 16, line 35, Applicant should set forth in the specification additional information with respect to the typical and observed disc floret shape, length, width, apex, base and margin descriptors and coloration for both surfaces with references to the employed color chart.
- H. Page 17, line 9, the recitation "pay floret" is unclear and confusing. Correction to the specification and/or clarification is necessary.
- I. Page 17, line 10, the recitation "pray floret" is unclear and confusing. Correction to the specification and/or clarification is necessary.
- J. Page 17, line 11, Applicant states that the concavity of the tip is present but it is unclear if Applicant intends the ray floret tip or something else. Correction to the specification and/or clarification is necessary.
- K. Page 17, line 13, Applicant states "flower". It appears --florets-- would be the more appropriate botanical term to use in this instance. Correction to the specification and/or clarification is necessary.
- L. Page 17, line 19, Applicant states "Number of flowers per a inflorescence cluster". This recitation is unclear as it is not understood what Applicant is intending. It appears Applicant may mean --Number of inflorescences per

cluster-- or --Number of heads per inflorescence cluster-- as set forth on page 13, lines 2-4. Correction to the specification and/or clarification is necessary.

- M. Applicant should set forth in the specification the typical and observed sepal shape, length, width, apex, base and margin descriptors and coloration for both surfaces with references to the employed color chart.
- N. Applicant should review the entire specification, claim and abstract for inconsistencies and grammatical errors in the translation of the instant specification to English. Correction to the entire specification, abstract and claim is necessary.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Claim Rejection

35 U.S.C. 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Comments

Due to the amount of revision seen necessary in this application, it is suggested that Applicant file a substitute specification, incorporating all additions, deletions and modifications so as to provide the printer a clean copy at the time of allowance.

Applicant should specifically authorize cancellation of the present specification to the same. Further, a clean copy and marked up copy (showing any addition, deletion, and/or modification) of the substitute specification should be submitted.

Applicant should note the new amendment format. (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Future Correspondence

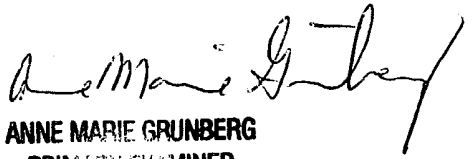
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louanne C. Krawczewicz Myers whose telephone number is (571) 272-0979. The examiner can normally be reached on Monday and Thursday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

LKM

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ANNE MARIE GRUNBERG
PRIMARY EXAMINER